

Missouri

Real Estate Appraisers Commission

Division of Professional Registration

Zoning and the URAR

By: Shawn Ordway

Missouri General Certified Real Estate Appraiser



Based on the information we see at the Commission, it appears that a large number

of Residential appraisers have problems with filling out zoning information correctly on the most common residential forms (URAR, 2055, etc.).

This article will address the importance of zoning information for residential appraisals; explain the most likely places to obtain correct zoning information; go over how to properly fill out the zoning section of the URAR; and point out some potential problem areas where appraisers need to be paying attention. While this article attempts to assist the residential

appraiser, it cannot substitute for the analysis that has to be performed by the appraiser on each and every appraisal assignment to make correct determinations of zoning compliance.

Importance of Zoning:

We find the majority of General Certified appraisers to be familiar with zoning and its relevance to the Highest and Best Use determination; in commercial reports this is usually spelled out in detail. However, some Residential appraisers appear to think the zoning portion of the URAR (and other residential form reports) is something to be simply filled in, rather than analyzed.

Many appraisers appear to assume that since a house is located on a piece of land that the Highest and Best Use is Residential. However, this is not always the case. It is

imperative that the appraiser conduct a Highest and Best Use analysis on each and every appraisal; while the result may actually confirm a residential Highest & Best Use determination on the majority of properties inspected by a residential appraiser, it is not a step the appraiser can just skip over in the appraisal process.

In the four accepted steps/tests of a Highest and Best Use analysis of a property, the consideration of zoning normally falls under the Legally Permissible test. However, the specific zoning criteria may also influence what is Physically Possible, and the uses allowed in a zoning district may also impact what is Financially Feasible. The appraiser should also consider any change in zoning that might be contemplated for the subject property. The importance of zoning in a proper Highest & Best Use analysis simply cannot be overstated.

Additionally, appraisers need to understand that communities and counties do not all have the same type of zoning structure. There are several different zoning formats/models utilized in Missouri; while it is beyond this article to explain them all in detail, the appraiser needs to understand that what is allowed under the zoning format in one community may vary greatly and not be

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Jeremiah W. (Jay) Nixon

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A Letter from the Division Director

By: Jane Rackers



In every profession there are leaders who command the respect of their peers for their professional expertise, ethics and fairness. The way they conduct themselves in their job becomes the standard for others to follow. They are the kind of people we need to serve on our professional licensing boards.

The Real Estate Appraisers board is made up of seven members; six real estate appraisers and one public member. All are appointed by the Governor, must be a resident of the state and must be a registered voter in Missouri for at least one year. The appraiser members must have appraisal experience for at least 5 years immediately preceding their appointment.

Currently there is an appraiser vacancy on the board and two board members serving on expired terms.

Governor Nixon wants all of the boards to "look like Missouri." He wants diversity of practice specialty, geography, gender, race and ethnicity.

If you know someone who would be an excellent member, please encourage them to apply.

For more information about the qualification for membership on the board or how to apply, go to the Governor's website at: www.governor.mo.gov and click on "Boards and Commissions," or call me at (573) 751-1081.

Renewal Reminder

**All licenses will expire
on June 30, 2010.**

The commission will not be sending out the traditional renewal notices as have been sent out in the past. Instead, in April a pressured sealed document will be mailed informing you that you are able to renew your license online with the provided PIN number.

If you are unable to renew on-line, you will need to contact the Commission office and ask that a paper renewal form be sent. This request can also be done online under Request for a Renewal Form.

Please remember that you are to have completed the 28 hours of continuing education prior to renewing. All certificates are to be maintained by the licensee and submitted to the Commission only upon request.

The renewal fee will be \$300.00.

Small Business Regulatory Fairness Board

The Small Business Regulatory Fairness Board (SBRFB) ensures that Missouri state agency rules and regulations do not create an unfair burden on small businesses.

SBRFB, working with small business owners throughout Missouri, ensures that the voice of small business is considered when state rules and regulations are created.

SBRFB works with state departments and agencies to identify rules and regulations that place an unfair burden on small business owners and recommends alternatives that benefit all parties.

Therefore, licensees are encouraged to periodically check the Commission's website: **pr.mo.gov/appraisers.asp** for any new proposed rules or amendments.

The Commission would appreciate receiving comments on the proposed rules, how it impacts your business and any suggested action that could be taken to mitigate the rule's impact on small businesses.

What's New with USPAP?

By: Julie Molendorp
Certified General Appraiser Commissioner,
Missouri Real Estate Appraiser's Commission



From October, 2008 to April, 2009, the Appraisal Standards Board published exposure drafts and took public comment on proposed changes to the Uniform Standards of Professional Appraisal Practice. After reviewing over 2,000 public comments, the ASB approved modifications to the 2008-2009 version of USPAP. The changes took effect January 1, 2010 and now should be actively in use by all levels of licensed appraisers in the State of Missouri. Although appraisers in Missouri only have to show a 7-hour USPAP update course taken since the last renewal period, it is strongly recommended that **ALL** Missouri appraisers take the new course as soon as possible, as they are responsible for knowing and implementing the changes as of January 1, 2010.

The majority of changes to the new version of USPAP were for clarification purposes and did not significantly alter the basic structure of the document. The following were simple changes to definitions as included in USPAP:

1. **Assignment:** (changed for clarity)

Old Definition: a valuation service provided as a consequence of an agreement between an appraiser and a client

New Definition: 1) **An agreement between an appraiser and a client to provide a valuation service;** 2)

the valuation service that is provided as a consequence of such an agreement

2. **Jurisdictional Exception:** (changed for clarity)

Old Definition: an assignment condition that voids the force of part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment.

New Definition: **An assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.**

3. **Signature**

The comment was removed regarding the appraiser's control of affixing the signature

Next, Standard Three (Appraisal Review, Development and Reporting) was revamped significantly. This Standard did not undergo significant changes to content or reporting requirements, but it was redesigned to read and flow in a manner similar to Standards One and Two. The other Standards followed a format of general requirements followed by specific requirements. Standard Three was rewritten to make the process of reviewing easier to follow. In addition, clarification was made regarding different types of review, whether the assignment is any one of the following: 1) providing an opinion of value for the subject of a review assignment, 2) providing an opinion of quality for the work that is the subject of an appraisal review assignment, or 3) providing analysis,

What's New with USPAP? continued...

recommendations or opinions for a consulting problem that is the subject of an appraisal consulting assignment

The next item changed in the 2010 USPAP is the elimination of the appraiser's obligation to allow the client access to the workfile for a Restricted Use Appraisal Report. The requirement that all appraisal reports contain sufficient information to enable the intended users of the appraisal to understand the report properly made this statement unnecessary. The subsequent corresponding sections were made to coordinate with this change.

Finally, and perhaps most relevant to the majority of Missouri Appraisers, the **Conduct Section of the Ethics Rule** was changed in regards to disclosure. The new section states the following:

Prior to accepting an assignment, and if discovered at any time during the assignment, an appraiser must disclose to the client and in the report certification:

• **Any services regarding the subject property performed by the appraiser within the prior three years, as an appraiser or in any other capacity.**

The purpose of this addition is to allow a prospective client the knowledge that the appraiser has or has not performed services related to a property before engagement. It should be noted that this disclosure is NOT only related to appraisal of

the subject property. It could include brokerage, leasing, auction, maintenance, insurance or any other type of service related to the property.

While the appraiser should maintain confidentiality in regards to previous clients and assignment results, the disclosure that the property was appraised (or leased, brokered, auctioned, etc) must be disclosed PRIOR to assignment acceptance or as soon as it is discovered. It also must be addressed in certification. This item was added in order to further preserve public trust in the profession and to avoid any appearance of bias or conflict of interest. In this scenario, the client has the ability to decide whether or not to proceed with an appraisal if the appraiser has a prior history with a property. Further, after lengthy discussion at the meeting of the Association of Appraisal Regulatory Officials between state regulators and Sandra Guilfoil, the Chair of the 2008-2009 Appraisal Standards Board, it was determined that no requirement was made for a written waiver of any sort between the appraiser and client when this situation arises. The appraiser must, at a minimum, have a conversation with the client regarding their history with a property and document it in the appraisal certification. She did clarify that she recommended this conversation take place even if the appraiser was appraising a property again for the same client. I don't recall her exact words, but it was along the lines of, "When in doubt, have the conversation and disclose." And an appraiser should be overly diligent in documenting this conversation in the workfile, so as to avoid any appearance of impropriety.

In closing, the changes to USPAP this cycle, while not sweeping, affect

our daily appraisal practice and must be understood and followed carefully. Remember, these changes took effect January 1, 2010! It is your job as a licensed appraiser in the State of Missouri to be cognizant of these changes, and to implement them in your daily practice.



Complaint Statistics

FY 07 (July 1, 2006 - June 30, 2007)	118
FY 08 (July 1, 2007 to June 30, 2008)	60
FY 09 (July 1, 2008 to June 30, 2009)	143
FY 10 (July 1, 2009-present)	69



Statistics

As of 4/9/10:

State Licensed	251
State Certified Residential	1,602
State Certified General	851



Examination Statistics

2008

		Pass	Fail
General	All	1 (100%)	0
	Retake	0	0
Residential	All	3 (60%)	2 (40%)
	Retake	1	--
State	All	--	--
		--	--

2009

		Pass	Fail
General	All	4 (66.67%)	2 (33.33%)
	Retake	--	2 (100%)
Residential	All	14 (66.67%)	7 (33.33%)
	Retake	2 (28.57%)	5 (71.43%)
State	All	1 (50%)	1 (50%)
	Retake	--	--

Meet your new Commission Members



Boyd Harris

Mr. Harris was initially appointed by Governor Matt Blunt on October 23, 2008 and was reappointed by Governor Jeremiah (Jay) Nixon on September

2, 2009. Mr. Harris is the owner of Boyd Harris Companies, Inc, Agri-Land Appraisal Group in Centralia, Missouri.

He is an active member of the American Society of Farm Managers and Rural Appraisers and the Missouri Appraiser Advisory Council (MAAC).

Mr. Harris received his certification as a state certified general real estate appraiser in 1992.



Keith Duncan

Mr. Duncan was appointed by Governor Jeremiah (Jay) Nixon on October 2, 2009. Mr. Duncan is currently employed with Gill Appraisal Services in Dexter, Missouri.

He has extensive multifamily experience specializing in work for the Department of Housing and Urban Development and working with lenders and developers through the Low-Income Housing Tax Credit (LIHTC) program.

Mr. Duncan received his certification as a state certified general real estate appraiser in 2004.

Zoning and the URAR continued...

allowed under a different zoning format in a different locale, even though the property use may be identical.

For an example, Pyramidal (Euclidian II) zoning seems to still be prevalent in many areas of the state. In this type of zoning, there is a hierarchical structure in which a higher zoning level will allow all uses from the preceding zoning level(s). For example, commercial zoned areas would allow all uses in multi-family districts, which allow all uses in two-family districts, which allow all uses in single family districts. If an appraiser was accustomed to this type of zoning, it would not be uncommon when working outside of his/her area of geographical competence to assume that a seemingly lesser use than that specifically stated by a zoning classification would be allowed. However, if they accepted an assignment in an area that had adopted a different zoning structure (specifically one that required the conventional separation of residential, commercial, agricultural and industrial uses) the appraiser's assumption would likely be incorrect.

Where Does An Appraiser Go To Obtain Zoning Information?

- Answer:** From the jurisdiction that regulates the zoning ordinance.
- Most large municipalities have a Zoning Department, Planning and Zoning Department, Community Development Department, or other related department that handles the zoning ordinance. If the appraiser is fortunate, both the zoning map and zoning ordinance may be published online.
 - For county zoning, look for an actual County Planning and Zoning Department; however many times the zoning ordinance may be under the control of the Public Works Department, or even the Road and Bridge Department. If the appraiser is not sure, contact the County Commission and they should be able to direct the appraiser to the correct department responsible for county zoning.
 - Zoning is NOT a function of the county assessor's office; although they may have access to the zoning map showing actual zoning districts. If the appraiser is asking the assessor's office personnel about zoning, the appraiser is talking to the wrong source.
 - In smaller communities, villages and towns, the City/Town Clerk is often the best source to find out

who is responsible for the zoning ordinance. The mayor/ mayor's office or governing body (e.g. Board of Aldermen) should know the answer as well.

Filling Out the URAR Form:

Consider the following information from a URAR form:

1) Specific Zoning Classification

In order to get this information the appraiser must reference, at a minimum, a zoning district map. Usually, specific zoning is delineated by short letter or number codes, but may be fully spelled out. Examples: RS-1, PUD, RA, M-Industrial, R/C, C-2 General Commercial, etc. Generically putting the word "Residential" on the form would not be accurate or correct, unless the zoning ordinance actually has a zoning district specifically named "Residential"; likewise there is nothing magical about "R1" or "R-1", unless that happens to be an actual zoning district.

2) Zoning Description

Describe the specific zoning classification. In some cases this may be the same information, or virtually the same, entered in the specific zoning classification. It does not need to be a long description, but it needs to appropriately describe the specific zoning, especially when the specific zoning codes give no indication of what zoning is present. For example, in an R-2 district, the "R" could signify Rural, Residential, or Restricted; without a short description, the information would not be clearly understood. Specific Zoning Classifications and Zoning Descriptions are not universal and normally vary from one jurisdiction to another. In addition, zoning classifications that appear to be similar can have significantly different zoning descriptions depending on the jurisdiction.

Using the same examples listed under Specific Zoning Classification above, the first line of the zoning portion of the URAR might be filled out as follows:

These are illustrative examples only:

<u>Specific Zoning Classification</u>	<u>Zoning Description</u>
RS-1	Single Family Residential
PUD	Planned Unit Development
RA	High density Multi-family
M-Industrial	Light industrial and manufacturing
R/C	Rural/Conservation
C-2 General Commercial	General Commercial

Zoning and the URAR continued...

3) Zoning Compliance (legal, legal nonconforming-grandfathered use, no zoning, illegal)

The zoning map is NOT the information needed in order to determine whether or not the subject is compliant. For this, the appraiser needs to reference the actual zoning ordinance. If the appraiser has not referenced and analyzed the zoning ordinance, there is no way of accurately and appropriately completing this portion of the URAR form for the determination of zoning compliance.

Most zoning ordinances have some common themes when it comes to residential uses. Some of the more common elements an appraiser might find concerning residential sites could include:

- Minimum lot frontage
- Minimum lot size (area)
- Minimum setbacks from property lines

The appraiser has already stated the site dimensions and site size on the residential forms, so some of the basic components of most zoning ordinances for residential property would be known.

Other zoning items that might affect residential sites could include:

- Whether or not accessory buildings are allowed;
- Height limit for structures
- Requirements for fences (height, setback from property line, etc.)
- Minimum parking spaces for multi-family units.

Some appraisers wisely maintain copies of zoning maps and ordinances from the locales where they most frequently accept assignments. Be cautious to periodically check for recent changes to the ordinance (or map) to avoid issues from using an outdated data source.

A) Legal Use:

If the subject property complies with all of the requirements of the specific zoning classification as described in the zoning ordinance, the appraiser would find that to be a Legal use.

Be aware that some zoning ordinances may contain both **Permitted** and **Conditional** uses, and if so, pay

special attention to the **Conditional** uses in your determination of Legal use.

Permitted uses are those uses expressly listed in the zoning ordinance, conform to all the requirements of the particular district, and generally require no additional authority to determine the use is legal. For example, if a two-family property is a permitted use in a specific residential zoning classification, then a duplex would be legal.

Conditional uses normally require some sort of permit or authorization by a regulating body for the use to be compliant within the specific zoning district. For a hypothetical example, residential uses in some Rural/Conservation districts might be special exceptions requiring a special application and approval process by the zoning board in order for the residential use to be legal. In such a case, the Conditional Use might only be granted to the applicant and may not transfer to subsequent owners of the property. This would be an issue that would have to be researched, analyzed and discussed in the determination of zoning compliance as reported on the URAR form.

There may be other legal uses, such as Special Permit, Special Exception, or others similar to a Conditional use that would require analysis to determine the applicability to the subject property.

B) Legal Nonconforming (grandfathered use):

This usually refers to land uses that were originally established and permitted as legal uses, but no longer conform to the zoning regulations in the districts where they are located. Legal nonconforming uses are often found in older, established areas or in transitional areas.

Usually, changes in ownership do not affect the nonconforming status of a property, but the appraiser must verify that fact in the zoning ordinance applicable to each property appraised.

Ordinances will possibly have rules about any changes to nonconforming uses. This could include rules pertaining to:

- Routine maintenance and repair
- Maintenance and repair due to damage
- Alterations or additions

Zoning and the URAR continued...

- Expansion or enlargement of nonconforming situations
- Discontinuance of the nonconforming use

Be aware that some ordinances will have special considerations for nonconforming lots. Generally, these considerations will try to allow for older established areas with noncompliant lots to be developed or redeveloped in conformity with other neighborhood uses. Considerations may also be made for otherwise un-developable lots, usually under strict regulation, where any variances granted will assure no adverse impact on the area or the public and can allow reasonable use of the property. Again, the appraiser would have to research the applicable zoning ordinance to see if any special considerations might apply in these situations.

If the appraiser finds the subject has inadequate frontage or site size, make sure whether or not a nonconforming (grandfather) clause in the zoning ordinance applies to the situation. Do not assume; check the zoning ordinance.

C) No Zoning:

This is the simplest determination to make when it applies. If there are no zoning ordinances, rules, or regulations enacted where the subject property is located, then marking this box informs the reader that no such zoning regulations exist.

- Do not assume that counties do/do not have zoning. If the appraiser is not sure, contact the County Commission, County Public Works, County Road & Bridge Department, or other related county departments until confirmation is obtained.
- Just because a county does not have countywide zoning does not mean that the individual communities in the county are without zoning as well. Do not be fooled by the size of a town or village. Unless there is no governmental body for the community, the appraiser would be well advised to call the City/Town Clerk and inquire as to whether or not they have a zoning ordinance.
- Be aware that counties can have planning departments, and even rules for the subdivision of land, without having a zoning ordinance. Just because

there is a Planning Department does not necessarily mean there will be a Zoning Department also.

- Even if a property is in a rural area which has no zoning, the appraiser should still conduct a complete Highest and Best Use analysis and report their findings. If an appraiser is ever influenced that the Highest and Best Use is residential, just because the lender wants that finding, realize it puts the lender in the role of the appraiser and the finding may be completely inaccurate (and the appraiser will be held completely responsible!). Make sure you are independent and objective and concluding your own Highest and Best use results, regardless of anyone else's interest.

D) Illegal Use:

A use that is not compliant with the zoning ordinance; does not meet the requirements of the zoning ordinance.

Remember, a situation where the subject site frontage or site size is deficient may be a legal nonconforming use under a grandfather clause. The appraiser must understand all of the possible remedies to deficiency situations before concluding illegal uses.

Examples of Illegal Uses:

In Jefferson City, MO if a use is discontinued for a period of 270 consecutive calendar days, the nonconforming use is considered to be abandoned and the only legal use from that time forward must comply with the current ordinance. We have some areas where old houses in the inner city sit on what is now Commercial zoned property. If a structure was to be vacant for a year, the nonconforming residential use would no longer apply and the building on the site would revert to the current commercial zoning; regardless that it may still be surrounded by other older residential properties. In this specific case, the residential use on the vacant house would be an illegal use. If an appraiser were to prepare a residential report on this vacant property, I think you can imagine the likely legal bills to follow, and separately it could result in a private, personal meeting with the Commission.

Be careful in areas mixed with single family and multi-family uses. Assume an old house was illegally converted to multi-family use sometime in the past (however, the illegal use may not be apparent). There are two units above grade and a basement apartment as well. The appraiser

Zoning and the URAR continued...

does not check the zoning and assumes the use is acceptable and does an appraisal based on the income production of a 3-unit property. The buyer and lender are unaware of the zoning issue and rely on the appraiser's report that the current use is compliant. When the zoning enforcement people come by and inform the new owner that the property can only be used as a single family residence in this specific zoning district, all heck breaks loose. The multi-family use is an illegal use. At this point, the appraiser starts reading the fine print of his/her E & O policy for the first time...

Summary:

Consideration of zoning is an extremely important component of the appraisal process. Do not just report the zoning district; in determining zoning compliance the appraiser must make sure they understand the requirements of the zoning ordinance applicable to the zoning district in which the property is located.

As a final note of caution, we are seeing more and more appraisers and appraisal firms that are covering larger and larger geographic areas. 1) Make sure you understand that geographic competency is a requirement of USPAP; 2) make sure you understand the zoning ordinance and related issues in each and every location where you perform appraisals.



The Commission sincerely thanks the following for their dedication to the Commission and their interest in public protection

- Janice Jones
- Anne McRoberts
- Phil Treacy
- Hope Whitehead

The Commission wishes each of you the very best in your future endeavors!

MOVING?

PLEASE NOTIFY THE COMMISSION OF YOUR NEW ADDRESS

The rules and regulations require all licensees to notify the Commission of all such changes by sending a letter to the office in Jefferson City, Missouri.

Please include a street address to facilitate any express mail deliveries.

**PLEASE MAIL TO:
Real Estate Appraisers
Commission
P.O. Box 1335, Jefferson City,
Missouri 65102-1335**

Can I do it? Should I do it?

- Competency and Practice

By: Boyd Harris



Recently the Commission has had several inquiries, and some complaints filed, regarding appraiser competency and scope of practice. So, it appears prudent to revisit some basic topics such as the Competency Rule and Scope of Practice. For purposes of this article, the reader may very well want to grab their latest copy of USPAP and the Missouri Appraiser statutes (RSMo 339.500) and the MREAC rules (20 CSR 2245) as these are very important.

While it seems basic, one of the underlying principles from USPAP is the Competency Rule. Not only is this found in USPAP it is also Item 1 in the Scope of Practice Rule in 20 CSR 2245-9.010. It says, in part: Prior to accepting an assignment... an appraiser shall ...have the knowledge and experience to complete the assignment competently; or must “disclose the lack of knowledge; take steps appropriate to complete the assignment competently; AND describe the lack of knowledge and steps taken to complete the assignment competently in the report”. Let’s take a look at the various parts of this requirement in simplistic terms. First, an appraiser must have knowledge and experience to complete the assignment competently. That

is fairly straight forward: know what you are doing, be familiar with the type of property you are appraising and the proper techniques and methods required to appraise the property, or don’t take the assignment. It is really that simple: if you don’t know how to appraise it, don’t take the job. There are a variety of excuses (“I’ve done it before, I needed the job”, etc.) to circumvent this provision but they won’t hold up if called into question. Second, if you don’t have the knowledge and experience, then you must disclose that to the client prior to accepting the assignment and then take appropriate steps to become competent, usually by education or allying with someone who is competent. The catch here, which is seldom complied with, is the last part of the statement: “describe the lack of knowledge... and the steps taken... IN THE REPORT”. This is where the real problem can lie; in the lack of disclosure in the report so that the user knows exactly whether or not the author was competent to be performing the appraisal assignment.

Now, let’s take a further look at the Scope of Practice Rule. Remember this from back in the summer of 2007? Enacted to law, by rule effective July 1, 2007, this applies to all licensed and certified appraisers. The purpose of this rule was to clarify some gray areas that existed prior to that time as to what type of property an appraiser could value with which type of certification. So, after a great amount of work, the MREAC enacted a rule that eliminated the gray areas and established very clear guidelines as to who could do what. One just has to read the rule to understand it. But, let’s look a little more closely.

First, General Certified Appraisers “may perform appraisals on all types of real estate regardless of complexity or transaction value... performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment;” That one is pretty clear cut. A general certified appraiser can value any type or value of property. The only catch here is the paragraph above. The appraiser must still be **COMPETENT** and **EXPERIENCED** to appraise the type of property in the assignment.

Next, there are the Residential Certified Appraisers. Let’s see what the rule says here: “...may perform appraisals on residential real estate of one to four (1–4) residential units without regard to transaction value or complexity...if, performed in compliance with all state and federal laws, rules and regulations pertaining to the ... assignment”. Further, it says, “...permits the appraisal of vacant or unimproved land that may be utilized for one- to four- (1–4) family purposes”. Here, it amounts to basically a Highest and Best Use conclusion; the Residential Certified Appraiser may appraise one to four family residential units, and vacant land for which the HBU would be for 1-4 family residential units. That is reasonably simple to understand. BUT, the rule goes on to say “...does not permit the appraisal of subdivisions or of agricultural real estate”. Individual lots within a subdivision would be permissible but an analysis and valuation of the subdivision as a whole would not be permissible. Then, there is the agricultural aspect. The rule clearly states that a Residential Certified Appraiser may not appraise agricultural land and

Can I do it? Should I do it?

- Competency and Practice continued...

goes on to state: "...“agricultural real estate” shall be defined as improved or unimproved land with a highest and best use and primary purpose devoted to income production by crops, live-stock and other products of the soil (fruit, pasture, timberland, etc)”. The interpretation is quite clear here. If the vacant land has any other use than for 1-4 family residential use, then the Residential Certified Appraiser cannot perform the appraisal. This would include recreational type tracts of land and any land that has income potential because the highest and best use is something other than 1-4 unit residential.

Finally, the State Licensed Appraiser, who "...may perform appraisals of real property consisting of one (1) residential unit, if, and only if, performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment". That is also very straight forward. The license is the minimal level of licensing and, as such, has a very restrictive scope of practice, limited only to single family residential units only. This would not permit appraisals of any vacant land.

Now, if you read the rule, you will note in the sections defining the Residential Certified and Licensed appraisers that there is a provision to do work outside the defined scope, something greater, if signed off by the appropriately certified appraiser for

the type of property being appraised. BUT, that is not meant to just be a sign off. The "higher" Certified Appraiser must still meet the burden of the Competency Rule. And, if signing off on someone else's work, that of an appraiser who may not be qualified to appraise that property, the "higher" certified appraiser must keep in mind the responsibility and obligation that goes with signing off. You are taking the other person's work, as your own, and becoming fully and completely liable for that work product. So, if there were to ever be a question or complaint about that report, it will not matter who actually wrote the report but the burden will lie with which appraiser signed the report that actually had the certification to value that property type.

And, we must also look at review work. If an appraiser accepts an appraisal review assignment, then the same Scope of Practice guidelines apply to review as to writing a report. If an appraiser is not qualified to value a particular property then they are not qualified to review an appraisal report on a property type that they cannot value. This must be disclosed to the client and the assignment refused. The commission has seen several cases where the reviewer of the report was not qualified to value that property type and this type of action is being dealt with.

One other misunderstanding that seems to be prevalent, especially in the realm of agricultural properties, relates to the type of client. There have been several cases in which a residential certified appraiser has valued farm land, both vacant and im-

proved, for an attorney or some other professional for an estate tax return or some type of estate planning action. The claim of defense here has been that since it is not for a Federally Related Transaction then it is acceptable. The appraiser should understand very clearly that this is not acceptable. If a Missouri appraiser has any type of certification or license, then they are bound by the Scope of Practice for that category, regardless of who the client and intended user/use of the report may be.

As the MREAC is charged with the protection of the public by assuring the competence and integrity of the certified and licensed appraisers in the state, the appraisers of the state must be assured that the Commission takes Scope of Practice issues, and complaints, very seriously and will pursue all appropriate measures to enforce the rule. Hopefully this review will clarify any gray areas that might have existed among the licensees and prevent crossing any lines that would cause an appraiser to stray into trouble.

The Commission sent the below letter to Wells Fargo expressing concerns regarding their new Desktop Appraisal



Jeremiah W. (Jay) Nixon
Governor
State of Missouri

Jane A. Rackers, Division Director
DIVISION OF PROFESSIONAL REGISTRATION

Department of Insurance
Financial Institutions
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Vanessa Beauchamp
Executive Director

April 15, 2010

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To Whom It May Concern:

In February 2010, a new product was released for providing restricted use desktop appraisals. The form, according to its instructions, is only to be used for single family residences, PUDs, and condominiums. Once registered with the lender, an appraiser will receive a request for the desktop appraisal. The appraiser has two days to complete the appraisal, is paid \$55, and must pay a \$4 fee to electronically transmit the report. If, during the completion of the appraisal, the appraiser determines that it does not meet the "minimum requirements" set for the appraisal form, the appraiser is to mark the report "No-Hit" and return it to the company. In "No-Hit" cases, the appraiser will receive no fee and will not be charged the transmission fee.

Although the Missouri Real Estate Appraisers Commission has never undertaken to approve or prohibit specific forms or software used to deliver appraisal results, the Commission does have several concerns regarding the use of this type of form related to the proper use of forms, generally, the preparation of restricted use reports and compliance with the USPAP Ethics and Scope of Work Rules.

Restricted Use Reports: An assignment is an agreement between an appraiser and a client for a valuation service. Once an appraiser accepts an assignment, USPAP applies to the appraiser's conduct in preparing the appraisal. Restricted use reports are a reporting option under Standards Rule 2-2(c), but in no way alter the requirements of Standard 1 for developing the appraisal. The process in developing an appraisal and documenting an appraisal in the workfile should be identical between a summary appraisal report and a restricted use report. Per USPAP, "the contents of the workfile must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1 and for the appraiser to produce a Summary Appraisal Report." (See Comments to Ethics Rule (Recordkeeping), 2010-2011 Edition.) These standards apply even if an appraiser ends up not completing the assignment and is not paid. If an appraisal report is created and sent to the client, a workfile must be produced and maintained.

New 2010 Disclosure Requirements: Upon providing any level of services, the appraiser will have certain disclosure obliga-

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tions under the 2010 change to the Conduct Section of the Ethics Rule of USPAP, even if no report was transmitted and/or no payment was received. The new provision states:

If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and in the subsequent report certification:

...

any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.

According to the instructions for this product, if an appraiser accepts an assignment to do this type of appraisal but subsequently discovers that the subject property does not meet minimum requirements, the appraiser will not get paid. This is referred to as a “no-hit”. Since an assignment that results in a “no-hit” may not be tracked in invoicing software, appraisers must establish tracking systems to keep track of these assignments so the appraiser can comply with the new USPAP disclosure requirement in the current and future assignments. Even though an appraisal is not prepared in “No-Hit” assignments, services would have been provided in conducting and reporting the preliminary analysis.

Scope of Work: The appraiser’s obligations to properly determine the scope of work are not diminished for this type of report. The Scope of Work Rule of USPAP states that the appraiser, not the client, must determine the scope of work necessary to develop credible assignment results. The appraiser must 1) identify the problem to be solved; 2) determine and perform the scope of work necessary to develop credible assignment results; and 3) disclose the scope of work in the report. Based on the risks inherent in the usage of forms, the strict directions provided with the assignment request, the relatively small fee to be paid and the fact an appraiser will not be paid if the appraisal is determined to be a “No-Hit”, an appraiser may be induced to improperly limit the scope of work based on the clients instructions and conditions for payment. The Scope of Work Rule states that “An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.”

There are several assignment conditions in this product that are referred to as “appraisal report minimum requirements”. Similar to one treating a maximum speed limit on the highway as a minimum speed limit, an appraiser may be tempted to treat these “minimum requirements” as “maximum requirements.” Comments to the Problem Identification section of the Scope of Work Rule states: “Communication with the client is required to establish most of the information necessary for problem identification. However, the identification of relevant characteristics is a judgment made by the appraiser . . .” This raises a concern common to any appraisal where a form is used. Sometimes, appraisers believe their responsibilities regarding the development and reporting of an appraisal assignment are limited by the space allowed in a form or the topics identified in the form. This is inaccurate. An appraiser’s duties are dictated by USPAP, not the form. Supplements and addendums should be used liberally to assure that all research and analysis are properly completed and reported.

Another issue related to scope of work is the proper evaluation of the data and sources of information. The new product requires appraisers to use MLS as the primary data source. In some areas of our state, MLS is not available or is unreliable. A better source of data might be the county assessor’s office or a private data collection system. The product also requires that appraisers must use a minimum of three closed comparable sales and a comparable listing and/or pending sale. At least two of the comparable sales must be less than 120 days old and at least two must be located within one mile of the subject. The GLA of the comparable sales must be within 20% of the GLA of the subject. Appraisals of condominiums with more than 15 units must include at least two comparable sales from the development within the last 12 months and at least one comparable listing and/or pending sale from the development. Condominiums with 15 units or less must include at least one comparable sale from the development within the past 12 months and, when available, a comparable listing or pending sale from the development. The Commission is concerned that these requirements may lead an appraiser to forego considering other important and relevant data sources simply because the form requires MLS data. This may lead the appraiser to not use the best data available and may well limit the amount of work performed to such an extent as to violate the Scope of Work Rule and impact the credibility of the appraisal.

Predetermined Results: Of major concern is the assignment condition that the appraiser will not receive a fee if the appraiser cannot meet all the product requirements. As noted above, this is referred to as a “No hit”. “No-hits” are produced when the

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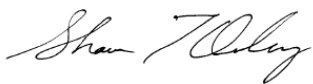
appraiser cannot produce a credible value due to insufficient subject data, the subject is an ineligible property type, the appraiser cannot meet all of the minimum report requirements, the subject is zoned commercial/industrial or the subject is not at its highest and best use. It appears that the assignment conditions may violate the provisions of the Management Section of the Ethics Rule related to accepting an assignment or compensation that is contingent upon a predetermined result. For example, if the appraiser searches for comparable sales but discovers there have been none within the last 120 days, the appraiser will not get paid. If the subject is located in a transitional area and the highest and best use would be as an interim or commercial use, it is a "no-hit" and there is no fee. The fee for the assignment is contingent on these predetermined results and opinions. This type of assignment may result in the loss of objectivity. An appraiser may be tempted to use sales that he or she would not otherwise use or to simply concur that the current use is the highest and best use, in order to receive a fee. The fact that an appraisal may not be completed (i.e., a "no-hit") is irrelevant. The Ethics Rule prohibits accepting such an assignment.

Other Products of Concern: There are appraisal products on the market now that allow or even require the appraiser to choose comparable sales from a database maintained by the software vender or client. Most of the comparable sales in those systems are data mined from other appraisal reports. These services are not connected directly to a local MLS system. Sometimes an employee of the software company may contact local real estate brokers to obtain comparable sales. If an appraiser uses this database for sales, the database must be listed as the source for comparable sales, with MLS or another source used for verification of those sales. In addition, if the appraiser is given comparable sales by the client or vendor, the appraiser must disclose that he or she received significant assistance in choosing comparable sales.

Some of these products give an appraiser a discount if the appraiser "voluntarily contributes" appraisal reports to the software database so that subject and comparable information can be mined. Keep in mind that doing so is a violation of the Confidentiality Section of the Ethics Rule of USPAP, as assignment results are also communicated to the database.

A final note – the low fee paid for this assignment does not in any way lessen the appraiser's legal requirement to comply with USPAP, and, in fact, could pressure an appraiser to shortcut the appraisal process, thus compromising the credibility of the appraisal result. If a complaint is received by the Missouri Real Estate Appraisers Commission, it will not be evaluated in light of the clients instructions, but the duties established by USPAP, an appraisers diligence in performing the needed analysis, the proper preparation of the workfile, and compliance with the USPAP reporting requirements. Therefore, the Real Estate Appraisers Commission cautions all appraisers when using any abbreviated form to exercise proper care that USPAP is followed.

Sincerely,



Shawn Ordway, Chair
Missouri Real Estate Appraisers Commission

Cc: Governor Jeremiah (Jay) Nixon
Craig Jacobs, Assistant Attorney General

Jane Rackers, Director, Division of
Professional Registration

David Wilkes, Chair, The Appraisal
Foundation

Jim Parks, Executive Director, Appraisal Subcommittee

Barry Wides, Deputy Comptroller, Office of the Comptroller of the Currency

Discipline

All complaints received by the Commission are numbered and tracked on the complaint log. A complaint may be based upon personal knowledge or information received from other sources. The complaint must be made in writing. Verbal or telephone communications are not acceptable, but you may request a complaint form by telephone, fill it out and mail back to the Commission.

In general, the complaint is considered to be a closed record and is not accessible to the public. Any complaint that is received by the Commission is acknowledged in writing. The complainant will be notified of the final outcome. Any disciplinary action taken by the Commission is a matter of public record. The Commission believes publication of disciplinary actions to be in the public interest and has included such in this newsletter.

If you have any questions, please contact Vanessa Beauchamp, Executive Director at our office. Please note that all disciplinary orders are posted on the website.

The following disciplinary actions were taken by the Commission since the last newsletter and will be maintained as open records, according to the terms of the action:

David Akin

Probation 5/18/2009 - 5/18/2011

Peter Barnett

Revoked 8/5/2009

Matthew Burghoff

Revoked 5/15/2009

Vincent Cantrell

Revoked 2/18/2010

Harlain Clemans

Suspended 5/21/2009

Gordon Cook

Revoked 3/9/2010

Bradley Dastrup

Probation 3/10/2009 - 3/10/2010

Ray Dillabough

Probation 12/25/2009 - 6/25/2010

Russell Ellison

Suspension 3/15/2010-6/15/2010

Probation 6/6/2010-6/6/2012

Michael Fitch

Revoked 2/10/2009

Steven Goldman

Revoked 11/13/2009

Michael Harmon

Probation 6/24/2009 - 6/24/2010

Randy Heath

Revoked 4/21/2009

Wade Higgins

Suspended 7/14/2009 - 7/14/2010

Probation 7/15/2010 - 7/15/2013

Robert Hoelter

Revoked 1/6/2010

Virgil Hulen

Probation 8/18/2009 - 8/18/2010

Daniel Hull

Revoked 2/10/2009

Beverly Kalwei

Suspension 5/30/2009 - 8/27/2009

Probation 8/28/2009 - 8/28/2011

Kent Krause

Suspension 12/3/2008 - 3/3/2009

Probation 3/4/2009 - 3/4/2012

Bee Lacy

Revoked 5/15/2009

Lance Lanphier

Suspended 5/21/2009

Paul LeVota

Probation 6/30/2009 - 12/30/2009

Curt Maddox

Probation 9/8/2009 - 9/8/2011

Philip Mannino

Probation 2/5/2010-2/5/2012

Brian Martin

Probation 6/19/2009 - 6/19/2011

Darrell McGill

Probation 9/16/2009 - 9/16/2010

Robert Newsome

Suspended 5/21/2009

Michael Nichols

Revoked 2/23/2010

Jeremy Plagman

Revoked 2/10/2009

William Plahn

Revoked 8/14/2009

Charles Pursley

Revoked 8/14/2009

Dana Scott

Suspension 12/15/2008 - 2/12/2009

Probation 2/13/2009 - 2/13/2011

Emerson Sutton

Suspended 5/21/2009 - 6/01/2009

Gwen Swan

Suspended 5/21/2009

Andrew Tegthoff

Revoked 8/14/2009

Tellee Warren

Probation 3/13/2010-3/13/2012

Randy Watson

Probation 1/21/2010-1/21/11

Patricia Westhoff

Probation 8/31/2009 - 8/31/2010

Tysen Williams

Probation 8/14/2009 - 8/14/2011

Robert Wood

Probation 8/20/2009 - 8/20/2011

Kent Wooten

Probation 3/1/2010-9/1/2010

Chris Yack

Suspension 1/13/10-6/13/2010

Probation 6/14/10-6/14/2012

Rule Amendments

Significant changes were made to the Trainee Rule which took effect February 28, 2010. The language in brackets [] was deleted and the language in bold was added. Should you have any questions please contact the office.

20 CSR 2245-3.005 Trainee Real Estate Appraiser Registration

(1) For purposes of this rule, “registrant” shall mean a “trainee real estate appraiser” and “registration” shall mean the registration with the commission of a “trainee real estate appraiser.”

(2) An applicant for licensure or certification shall only receive credit for appraisal experience earned after July 1, 2008, if the applicant has registered as a trainee real estate appraiser with the commission prior to accruing the experience.

(3) A person may register as a trainee real estate appraiser by submitting the following to the commission:

(A) An application on a form prescribed by the commission, including, but not limited to, the name and license number of each certified appraiser under which the registrant will provide appraisal services;

(B) An affidavit signed by each supervising appraiser acknowledging the supervisory relationship on a form prescribed by the commission; and

(C) The prescribed fee.

(4) No real estate appraisal experience is required as a prerequisite for registration.

(5) Training.

(A) The registrant shall be subject to direct supervision by [a supervising appraiser(s) in good standing, who shall be state-certified] a Missouri certified appraiser in good standing with the commission for the prior two (2) years. If

the trainee is currently licensed or certified, supervision shall only be required if the trainee is completing experience outside their current scope of practice.

(B) The supervising appraiser(s) shall be responsible for the training, guidance, and direct supervision of the registrant by:

1. Accepting responsibility for the appraisal report by signing and certifying that the report complies with the Uniform Standards of Professional Appraisal Practice, (USPAP) 2006 Edition. The USPAP, 2006 Edition, is incorporated herein by reference and can be obtained from The Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington, DC 20005, by calling (202) 347-7722 or at www.appraisalfoundation.org.

2. Reviewing and signing the appraisal report(s) for which the registrant has provided appraisal services; and

3. Personally inspecting each appraised property with the registrant until the supervising appraiser determines the registrant trainee is competent, in accordance with the competency rule of USPAP. If applying for a residential certification, the supervising appraiser shall personally inspect fifty (50) properties with the registrant, unless otherwise waived by the commission for good cause. If applying for certified general, the supervising appraiser shall personally inspect twenty (20) non-residential properties with the registrant, unless otherwise waived by the commission for good cause.

(C) The registrant is permitted to have more than one (1) supervising appraiser, but a supervising appraiser may not supervise more than three (3) registrants at one (1) time. The supervisor shall not be employed by the trainee.

(D) The registrant and a supervising appraiser shall notify the commission of a newly created supervisory relationship and submit an affidavit from the supervising appraiser acknowledging the supervisory relationship prior to the registrant performing appraisal services under the supervising appraiser.

A registrant shall not receive credit for appraisal experience under a certified appraiser unless the registrant has first notified the commission of the certified appraiser's name and license number. Within ten (10) days of the termination of a supervisory relationship, the registrant and the supervising appraiser shall notify the commission that the supervisory relationship has been terminated.

(E) The registrant and each supervising appraiser shall maintain an appraisal log. This appraisal log may be maintained jointly, but each shall be individually responsible to assure the completion and availability of the appraisal log regardless of the agreement or practice of the registrant and the supervising appraiser regarding its maintenance. Separate appraisal logs shall be maintained for each supervising appraiser. The registrant and the supervising appraiser shall provide a copy of the appraisal log to the commission upon request. At a minimum, the appraisal log shall include the information required by 20 CSR 2245-2.050 and the following:

1. Description of work performed by the trainee and scope of the review and supervision of the supervising appraiser;

2. Number of actual work hours by the trainee on the assignment; and

3. The name and state certification number of the supervising appraiser.

(F) The Missouri certification of the supervising appraiser shall be in good standing and not subject to revocation or suspension within the last two (2) years. “Subject to revocation or suspension within the last two (2) years” shall mean that any term of revocation or suspension shall be terminated more than two (2) years prior to a licensee serving as supervising appraiser. Anyone subject to probation cannot supervise trainees during the probationary period, unless otherwise ordered by the commission.

(G) A certified appraiser may not serve as the supervising appraiser for an indi-

Rule Amendments continued...

vidual trainee for more than five (5) years, unless otherwise approved by the commission for good cause. The “trainee real estate appraiser” registration is not intended as a long-term method of performing appraisal services in the absence of progress toward licensure or certification as an appraiser. A supervising appraiser shall not serve as supervising appraiser for any trainee if the supervisor has knowledge that the trainee does not intend to progress toward licensure or certification or with the intent to evade the appraiser licensing or certification requirements of Chapter 339, RSMo.

(6) A person may register as a trainee under a supervising appraiser licensed or certified in another state if:

(A) The supervising appraiser is certified in another state that has requirements that are substantially similar to the requirements in Missouri for certification as a state certified general or state certified residential real estate appraiser;

(B) The supervising appraiser’s certification from the other state authorizes the supervisor, at a minimum, to perform the same scope of appraisal services that either a Missouri certified general or certified residential appraiser is authorized to perform.

(C) The supervising appraiser’s certification from the other state is active and has been in good standing and not subject to discipline for the prior two (2) years. The trainee real estate appraiser application shall be accompanied by verification from the supervising appraiser’s certification authority verifying that the supervising appraiser’s certification is active, in good standing and has not been disciplined as provided in this subsection.

(D) Upon application for certifica-

tion, trainees that are supervised by an appraiser certified in another state shall be required to comply with all certification requirements established by Missouri law, including, 20 CSR 2245-3.010(5), which provides that fifty percent (50%) of all experience hours must be completed in the state of Missouri. Trainees are also reminded that pursuant to 20 CSR 2245-3.010, applicants for a general certification must have accumulated a total of three thousand (3,000) hours of appraisal experience of which at least fifty percent (50%) (one thousand five hundred (1,500) hours) shall be in non-residential appraisal work and under the supervision of a Missouri certified general real estate appraiser or a certified general appraiser certified in another state and who is authorized perform the same scope of appraisal services as a Missouri certified general appraiser.

(7) As used in this section, “direct supervision” shall mean, the degree of supervision required of a supervisory appraiser overseeing the work of a registrant by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registrant has regular direction, guidance and support from a supervisory appraiser. The supervisor shall determine the level of supervision that is appropriate for the appraisal project and the skill level of the registrant as assessed by the supervisor. Direct supervision shall include but is not limited to the following:

(A) Reviewing the registrant’s appraisal report(s) to ensure research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading; and

(B) Reviewing the registrant’s work product and discussing with the registrant any edits, corrections or modifications that need to be made.